

threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefitted thereby.

"(3) PUBLIC AND PRIVATE CAPITAL INVESTMENT

"(A) A balance of public and private capital investment determines the economic well-being of a town or region. An area of industrial, recreational, or residential growth requires highways, schools, utilities, and services the cost of which is borne in large part by others. A settled area, with a full complement of public services, needs continuing private capital investment to create a tax base to pay for the services. Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. The location and rate of development must be considered, so that the revenue and capital resources of the town, region or state are not diverted from necessary and reasonably anticipated increased governmental services. Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.

"(B) Consideration must be given to the consequences of growth and development for the region and the state as well as for the community in which it takes place. An activity or project that imposes burdens or deprivations on other communities or the state as a whole cannot be justified on the basis of local benefit alone.

"(4) PLANNING FOR GROWTH

"(A) Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.

"(B) Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other

than primary agricultural soil.

"(C) Planning at all levels should provide for the development and allocation of lands and resources of existing cities, towns, and villages generally in proportion to their existing sizes as related to distribution state-wide and a projection of the reasonably expected population increase and economic growth, unless a community, through duly adopted plans, makes the determination that it desires and has the ability to accommodate more rapid growth.

"(D) Consistent with all other policies and criteria set forth in this act, development as defined in section 6001 of this chapter in areas which are not natural resources as referred to in paragraph (9) of this section should be permitted at reasonable population densities and reasonable rates of growth, with emphasis on cluster planning and new community planning designed to economize on the costs of roads, utilities and land usage.

"(5) SEASONAL HOME DEVELOPMENT

"Seasonal homes not only are convertible to permanent homes but are often so converted and may require increased municipal and public services. There should, therefore, be imposed such conditions upon a seasonal home development or subdivision as should be imposed upon a permanent residential development or subdivision.

"(6) GENERAL POLICIES FOR ECONOMIC DEVELOPMENT

"(A) In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact.

"(B) Any effect which directly or indirectly accelerates economic growth should be consistent with local, regional and state objectives.

"(C) One of the long-range benefits to the community of commercial and industrial development should be to provide stable employment opportunities at all economic levels, particularly for

Vermont's unemployed and underemployed.

"(7) SPECIFIC AREAS FOR RESOURCE DEVELOPMENT

"The flow of cash into Vermont to pay for goods manufactured in the state, grown in the state, or mined and quarried in the state, and to pay for services offered in the state to out-of-staters is of primary importance to the state's economy. Enterprises adding the greatest value by conversion of native raw materials or the products of the land are particularly beneficial to the public interest.

"(8) PLANNING FOR HOUSING

"(A) Opportunity for decent housing is a basic need of all Vermont's citizens. A decent home in a suitable living environment is a necessary element for protecting the health, safety, and general welfare of the public. The housing requirement for Vermont's expanding resident population, particularly for those citizens of low or moderate income, must be met by the construction of new housing units and the rehabilitation of existing substandard dwellings. - It is in the public interest that new or rehabilitated housing should be: safe and sanitary; available in adequate supply to meet the requirements of all Vermont's residents; located conveniently to employment and commercial centers; and, coordinated with the provision of necessary public facilities and utilities and consistent with municipal and regional plans.

"(B) Sites for multi-family and manufactured housing should be readily available in locations not inferior to those generally used for single-family conventional dwellings.

"(C) There should be a reasonable diversity of housing types and choice between rental and ownership for all citizens in a variety of locations suitable for residential development and convenient to employment and commercial centers.

"RESOURCE USE AND CONSERVATION"

"(9) NATURAL RESOURCES SPECIFICALLY PROVIDED FOR

"Those natural resources referred to in section 6086(a)(1)(A) 'Headwaters', (B) 'Waste disposal', (C) 'Water conservation', (D) 'Floodplains', (E) 'Watercourses', and (F) 'Shorelines', and section

6086(a)(8)(A) 'Wildlife habitat and endangered species', and section 6086(a)(9)(B) 'Primary agricultural soils', (C) 'Forests and secondary agricultural soils', (D) 'Earth resources', (E) 'Extraction of earth resources', and (K) 'Development affecting public investments' should be planned for development and use under the principles of environmental conservation set forth in those sections.

"(10) RECREATIONAL RESOURCES

"(A) The use and development of land and waters should occur in such a way as not to significantly diminish the value and availability of outdoor recreational activities to the people of Vermont, including hunting, fishing, hiking, canoeing and boating, skiing, horseback riding, snowmobiling, and other outdoor recreational activities.

"(B) The effects of development and subdivision on availability of and access to lands which provide opportunities for outdoor recreation should be considered, and such availability of access should be provided for where feasible.

"(11) SPECIAL AREAS

"Lands that include or are adjacent to sites or areas of historical, educational, cultural, scientific, architectural or archeological value, including those designated by the rules of the environmental board, should only be developed in a manner that will not significantly reduce that value of the site or area. Sites or areas which are in danger of destruction should be placed in whatever form of public or private ownership that would best maintain and utilize their value to the public.

"(12) SCENIC RESOURCES

"The use and development of lands and waters should not significantly detract from recognized scenic resources including river corridors, scenic highways and roads, and scenic views. Accordingly conditions may be imposed on development in order to control unreasonable or unnecessary adverse effects upon scenic resources.

"(13) CONSERVATION OF ENERGY

"Energy conversion and utilization depletes a limited resource, and produces wastes harmful to the environment, while facilitating our economy and satisfying human needs essential to life. Energy conservation should be actively encouraged and wasteful practices discouraged.

"(14) TAXATION OF LAND

"Land should be appraised and assessed for tax purposes on the use of the land consistent with this act and any other state or local law or regulation affecting current or prospective use of land.

"GOVERNMENT FACILITIES AND PUBLIC UTILITIES

"(15) PLANNING FOR GROWTH

"The development and provision of governmental and public utility facilities and services should be based upon a projection of reasonably expected population increase and economic growth, and should recognize the limits of the state's human, financial, and natural resources.

"(16) PUBLIC FACILITIES OR SERVICES ADJOINING AGRICULTURAL OR FORESTRY LANDS

"The construction, expansion or provision of public facilities and services should not significantly reduce the resource value of adjoining agricultural or forestry lands unless there is no feasible and prudent alternative, and the facility or service has been planned to minimize its effect on the adjoining lands.

"(17) PLANNING FOR TRANSPORTATION AND UTILITY CORRIDORS

"The development and expansion of governmental and public utility facilities and services should occur within highway or public utility rights-of-way corridors in order to reduce adverse physical and visual impact on the landscape and achieve greater efficiency in the expenditure of public funds.

"(18) TRANSPORTATION SYSTEMS

"Safe, convenient and economical transportation is essential to the people and economy of Vermont and should be planned so as to conform to and further the purposes of this act. Highway, air, rail and other means of transportation should be mutually supportive, balanced and integrated. The transportation system should provide convenience and service which are commensurate with need and should respect the integrity of the natural environment. New construction or major reconstruction of roads and highways should provide paths, tracks or areas solely for use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest.

"(19) PLANNING FOR WASTE DISPOSAL

"Development which is responsible for unique or large amounts of waste should be permitted only if it can be demonstrated that available methods will allow the environment to satisfactorily assimilate the waste and that the public can finance the disposal method without assuming an unreasonable economic burden."

§ 6043. Repealed. 1983, No. 114 (Adj. Sess.), § 5.

§ 6044. Public hearings

(a) The board shall hold public hearings for the purpose of collecting information to be used in establishing the capability and development plan, and interim land capability plan. The public hearings may be held in an appropriate area or areas of the state and shall be conducted according to rules to be established and published by the board.

(b) The board may, on its own motion or on petition of an interested agency of the state or any regional or local planning commission, hold such other hearings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, and carrying out of its duties, or the formulation of its rules and regulations.

(c) At least one public hearing shall be held in each district

prior to adoption of a plan pursuant to section 6042 of this title. Notice of a hearing shall be furnished each municipality, and municipal and regional planning commission in the district where the hearing is to be held not less than fifteen days prior to the hearing.

(d) The provisions of chapter 25 of Title 3 shall not apply to the hearings under this section.--1969, No. 250 (Adj. Sess.), § 21, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 2.

§ 6045. Repealed. 1983, No. 114 (Adj. Sess.), § 5.

§ 6046. Approval of governor and legislature

(a) Upon approval of a capability and development or interim land capability plan by the board, it shall submit the plan to the governor for approval. The governor shall approve the plan, or disapprove the plan or any portion of a plan, within 30 days of receipt. If the governor fails to act, the plan shall be deemed approved by the governor. This section shall also apply to any amendment of a plan.

(b) After approval by the governor, plans pursuant to section 6042 of this title shall be submitted to the general assembly when next in session for approval. A plan shall be considered adopted for the purposes of section 6086(a)(9) of this title when adopted by the act of the general assembly. No permit shall be issued or denied by a district commission or environmental board which is contrary to or inconsistent with a local plan, capital program or municipal bylaw governing land use unless it is shown and specifically found that the proposed use will have substantial impact or effect on surrounding towns, the region or an overriding interest of the state and the health, safety and welfare of the citizens and residents thereof requires otherwise.--1969, No. 250 (Adj. Sess.), § 23, eff. April 4, 1970; amended 1973, No. 85, § 5; 1983, No. 114 (Adj. Sess.), § 3.

§ 6047. Changes in the capability and development plan

(a) After final adoption, any department or agency of the state or a municipality, or any property owner or lessee may petition the

board for a change in the capability and development plan.

(b) Within 10 days of receipt, the board shall forward a copy of the petition to the district commission and regional planning agency for comments and recommendations. If no regional planning commission exists, the copy shall be sent to the affected municipal planning commissions and municipalities.

(c) After 60 days but within 120 days of the original receipt of a petition, the board shall advertise a public hearing to be held in the appropriate county. The board shall notify the persons and agencies that have an interest in the change of the time and place of the hearing and the procedures established for initial adoption of a plan shall apply.

(d)-(f) [Repealed.]--1969, No. 250 (Adj. Sess.), § 24, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 4.

Subchapter 4. Permits

§ 6081. Permits required; exemptions

(a) No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit. This section shall not prohibit the sale, mortgage or transfer of all, or an undivided interest in all, of a subdivision unless the sale, mortgage or transfer is accomplished to circumvent the purposes of this chapter.

(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the department of health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the board of health regulations, or has pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a state highway on which a hearing pursuant to section 222 of Title 19 has been held prior to June 1, 1970. Subsection (a)

of this section shall apply to any substantial change in such excepted subdivision or development.--1969, No. 250 (Adj. Sess.), §§ 6, 7.

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under 10 V.S.A. § 6605d; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.--1990, No. 218 (Adj. Sess.), § 2.

(d) For purposes of this section, the following municipal projects shall not be considered to be substantial changes, regardless of the acreage involved, and shall not require a permit as provided under subsection (a) of this section:

(1) essential municipal wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent.

(2) essential municipal waterworks enhancements that do not expand the capacity of the facility by more than 10 percent.

(3) essential public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.

(4) essential municipal building reconstruction or expansion that does not expand the floor space of the building by more than 10 percent.--1990, No. 276 (Adj. Sess.), § 17a.

(e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.--1990, No. 276 (Adj. Sess.), § 17b.

(f) A permit application for a development for which a certificate of need pursuant to section 6606a of this title is required shall be accompanied by such certificate.--Amended 1989, No. 218 (Adj. Sess.), § 2,; No. 276 (Adj. Sess.), §§ 17a, 17b, eff. June 20, 1990; No. 282 (Adj. Sess.), § 7, eff. June 22, 1990.

(g) The owners or operators of earth removal sites associated

with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the district environmental commission having jurisdiction. At the district commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.--Added 1992, No. 256 (Adj. Sess.) § 30, eff. June 9, 1992.

(h) No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of this title. Closure and post-closure operations covered by this provision are limited to the following on-site operations: final landfill cover system construction and related maintenance operations, water quality monitoring, landfill gas control systems installation and maintenance, erosion control measures, site remediation and general maintenance. Prior to issuing a final order for closure for landfills qualifying for this exemption, a public informational meeting shall be noticed and held by the secretary with public comment accepted on the draft order. The public comment period shall extend no less than seven days before the public meeting and 14 days after the meeting. Public comment related to the public health, water pollution, air pollution, traffic, noise, litter, erosion and visual conditions shall be considered. Landfills with permits in effect under this chapter as of July 1, 1994, shall not qualify for an exemption as described under this section.--Added 1994, No. 232 (Adj. Sess.), § 4, eff. June 17, 1994.

(i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities. --Added 1994, No. 200 (Adj. Sess.), § 2, eff. June 17, 1994.

(j) With respect to the extraction of slate from a slate

quarry that is included in final slate quarry registration documents, if it were removed from a site prior to June 1, 1970, the site from which slate was actually removed, if lying unused at any time after those operations commenced, shall be deemed to be held in reserve, and shall not be deemed to be abandoned.

(k)(1) With respect to the commercial extraction of slate from a slate quarry, activities that are not ancillary to slate mining operations may constitute substantial changes, and be subject to permitting requirements under this chapter. "Ancillary activities" include the following activities that pertain to slate and that take place within a registered parcel that contains a slate quarry: drilling, crushing, grinding, sizing, washing, drying, sawing and cutting stone, blasting, trimming, punching, splitting and guaging, and use of buildings and use and construction of equipment exclusively to carry out the above activities. Buildings that existed on April 1, 1995, or any replacements to those buildings, shall be considered ancillary.

(2) Activities that are ancillary activities that involve crushing, may constitute substantial changes if they may result in significant impact with respect to any of the criteria specified in subdivisions 6086(a)(1) through (10) of this title.

(1)(1) By no later than January 1, 1997, any owner of land or mineral rights or any owner of slate quarry leasehold rights on a parcel of land on which a slate quarry was located as of June 1, 1970, may register the existence of the slate quarry with the district commission and with the clerk of the municipality in which the slate quarry is located, while also providing each with a map which indicates the boundaries of the parcel which contains the slate quarry.

(2) Slate quarry registration shall state the name and address of the owner of the land, mineral rights or leasehold right; whether that person holds mineral rights, or leasehold rights or is the owner in fee simple; the physical location of the same; the physical location and size of ancillary buildings; and the book and page of the recorded deed or other instrument by which the owner holds title to the land or rights.

(3) Slate quarry registration documents shall be submitted to

the district commission together with a request, under The provisions of subsection 6007(c) of this title, for a final determination regarding the applicability of this chapter.

(4) The final determination regarding a slate quarry registration under subsection 6007(c) of this title shall be recorded in the municipal land records at the expense of the registrant along with an accurate site plan of the parcel depicting the site specific information contained in the registration documents.

(5) With respect to a slate quarry located on a particular registered parcel of land, ancillary activities on the parcel related to the extraction and processing of slate into products that are primarily other than crushed stone products shall not be deemed to be substantial changes as long as the activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.

NOTE: Sec. 3 of Act 30. EXTENSION OF MORATORIUM

With respect to quarries that qualify for registration under this act, Sec. 37(a) of No. 232 of the Act of the 1993 Adj. Sess. (1994) is amended by striking the date "April 11, 1995" and inserting in lieu thereof the date "January 1, 1997."

§ 6082. Approval by local governments and state agencies

The permit required under section 6081 of this title shall not supersede or replace the requirements for a permit of any other state agency or municipal government.--1969, No. 250 (Adj. Sess.), § 27, eff. April 4, 1970.

§ 6083. Applications

(a) An application for a permit shall be filed with the district commissioner as prescribed by the rules of the board and shall contain at least the following documents and information:

(1) The applicant's name, address, and the address of each of the applicant's offices in this state, and, where the applicant is not an individual, municipality or state agency, the form, date and place of formation of the applicant.

(2) Five copies of a plan of the proposed development or

subdivision showing the intended use of the land, the proposed improvements, the details of the project, and any other information required by this chapter, or the rules promulgated thereunder.

(3) The fee prescribed by rule. In no event shall a permit application fee exceed \$135,000. Amended, 1996, No. 186, (Adj. Sess.), § 35 eff. May 22, 1996.

(4) Certification of filing of notice as set forth in § 6084 of this title.

(b) The board and district commission may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application. An applicant shall grant the board or district commission, or their agents, permission to enter upon his land for these purposes.

(c) Where an application concerns the extraction or processing of fissionable source material, before the application is considered the district commission shall obtain the express approval of the general assembly by act of legislation stating that extraction or processing of fissionable source material will promote the general welfare. The district commission shall advise the general assembly of any application for extraction or processing of fissionable source material by delivering written notice to the speaker of the house of representatives and to the president of the senate, and shall make available all relevant material. The procedural requirements and deadlines applicable to permit applications under this chapter shall be suspended until the approval is granted. Approval by the general assembly under this subsection shall not be construed as approval of any particular application or proposal for development.

(d) The board and commissions shall make all practical efforts to process permits in a prompt manner. The board shall establish time limits for permit processing as well as procedures and time periods within which to notify applicants whether an application is complete. The board shall report annually by February 15 to the house and senate committees on natural resources and energy and government operations. The annual report shall assess the performance of the board and commissions in meeting the limits, identify areas which hinder effective performance; list fees

collected for each permit; summarize changes made by the board to improve performance; describe staffing needs for the coming year; and certify that the revenue from the fees collected is at least equal to the costs associated with those positions.--1969, No. 250 (Adj. Sess.), §§ 8, 15, eff. April 4, 1970; amended 1979, No. 123 (Adj. Sess.), § 6, eff. April 14, 1980; 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.) § 3.

(e) The district commissions shall give priority to municipal projects that have been mandated by the state through a permit, enforcement order, court order, enforcement settlement agreement, statute, rule or policy.--Amended 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.), § 3.

(f) In situations where the party seeking to file an application is a municipality or a solid waste management district empowered to condemn the involved land or an interest in it, then the application need only be signed by that party. Amended 1991, Act 109, § 7, eff. June 28, 1991.

§ 6084. Notice

(a) On or before the date of filing of application the applicant shall send notice and a copy of the application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the land lies. Amended 1991, Act 109, § 2, eff. June 28, 1991. Amended 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995.

(b) The district commission shall forward notice and a copy of the application to the board and any state agency directly affected, the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title, and any other municipality,

state agency, or person the district commission or board deems appropriate. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not more than 7 days after receipt of the application.--1969, No. 250 (Adj. Sess.), § 9, eff. April 4, 1970. Amended 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995.

§ 6085. Hearings

(a) Anyone required to receive notice by section 6084 of this title and any adjoining property owner may request a hearing by filing a request within 15 days of receipt of notice. Upon receipt of notice the district commission shall treat the application pursuant to section 814 of Title 3. The district commission may order a hearing without a request within 20 days of receipt of the application.

(b) The hearing or a prehearing conference shall be held within 40 days of receipt of the application or notice of appeal. The parties shall be given not less than 10 days notice. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not less than 10 days before the hearing date. Amended 1993, No. 82, § 4, eff. July 1, 1993.

(c)(1) Parties shall be those who have received notice, adjoining property owners who have requested a hearing, and such other persons as the board may allow by rule. For the purposes of appeal to the supreme court, only the applicant, the landowner if the applicant is not the landowner, a state agency, the regional and municipal planning commissions and the municipalities required to receive notice shall be considered parties. An adjoining property owner may participate in hearings and present evidence only to the extent the proposed development or subdivision will have a direct effect on is or her property under section 6086(a)(1) through (a)(10) of this title.

(2) A district commission, according to the procedures established in the rules of the board, shall determine party status with respect to individuals and organizations at the commencement of the hearing process and shall re-examine those determinations before the close of hearings and state the results of that re-examination

in the district commission decision. In the re-examination of party status coming before the close of district commission hearings, persons having obtained party status up to that point in the proceedings shall be presumed to retain party status. However, on motion of a party, or on its own motion, a commission shall consider the extent to which parties continue to qualify for party status. Determinations made before the close of district commission hearings shall supersede any preliminary determinations of party status. Added, 1993, No. 232 (Adj. Sess.), § 30, eff. March 15, 1995.

(d) If no hearing has been requested or ordered within the prescribed period no hearing need be held by the district commission. In such an event a permit shall be granted or denied within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.--1969, No. 250 (Adj. Sess.), §§ 10, 11, eff. April 4, 1970; 1973, No. 85, § 9; 1991, No. 109, § 3, eff. June 28, 1991.

(e) The board and any district commission, acting through one or more duly authorized representatives at any prehearing conference or at any other times deemed appropriate by the board or by the district commission, shall promote expeditious, informal and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences. No board member or district commissioner who is participating as a decisionmaker in a particular case may act as a duly authorized representative for the purposes of this subsection. These efforts at dispute resolution shall not affect the burden of proof on issues before a commission or the board, nor shall they affect the requirement that a permit may be issued only after the issuance of affirmative findings under the criteria established in section 6086 of this title. Added, 1993, No. 232 (Adj. Sess.), § 31, eff. March 15, 1995.

(f) A hearing shall not be closed until a commission or the board provides an opportunity to all parties to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission or the board shall conclude deliberations as soon as is reasonably practicable. A decision of a commission or the board shall be issued within 20 days of the completion of deliberations.

Added, 1993, No. 232 (Adj. Sess.) § 31, eff. March 15, 1995.

§ 6086. Issuance of permit; conditions and criteria

(a) Before granting a permit, the board or district commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations.

(A) **Headwaters.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:

- (i) headwaters of watersheds characterized by steep slopes and shallow soils; or
- (ii) drainage areas of 20 square miles or less; or
- (iii) above 1,500 feet elevation; or
- (iv) watersheds of public water supplies designated by the Vermont department of health; or
- (v) areas supplying significant amounts of recharge waters to aquifers

(B) **Waste disposal.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into

ground water or wells.

(C) **Water conservation.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

(D) **Floodways.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria:

(i) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and endanger the health, safety and welfare of the public or of riparian owners during flooding; and

(ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.

(E) **Streams.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners.

(F) **Shorelines.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other criteria, the development or subdivision of shorelines must of necessity be located on a shoreline in order to fulfill the purpose of the

development or subdivision, and the development or subdivision will, insofar as possible and reasonable in light of its purpose:

(i) retain the shoreline and the waters in their natural condition,

(ii) allow continued access to the waters and the recreational opportunities provided by the waters,

(iii) retain or provide vegetation which will screen the development or subdivision from the waters, and

(iv) stabilize the bank from erosion, as necessary, with vegetation cover.

(G) **Wetlands.** A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the water resources board, as adopted under section 905(9) of this title, relating to significant wetlands.

(2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

(7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

(A) Necessary wildlife habitat and endangered species. A

permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species, and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species, or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied, or

(iii) a reasonable acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of sections 7(a)(1) through 7(a)(19) of this act shall not be used as criteria in the consideration of applications by a district commission or the environmental board.

(A) Impact of growth. In considering an application, the district commission or the board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose

conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

(B) **Primary agricultural soils.** A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not significantly reduce the agricultural potential of the primary agricultural soils; or,

(i) the applicant can realize a reasonable return on the fair market value of his land only by devoting the primary agricultural soils to uses which will significantly reduce their agricultural potential; and

(ii) there are no nonagricultural or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage; and

(iv) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential.

(C) **Forest and secondary agricultural soils.** A permit will be granted for the development or subdivision of forest or secondary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable

criteria, either, the subdivision or development will not significantly reduce the potential of those soils for commercial forestry, including but not limited to specialized forest uses such as maple production or Christmas tree production, of those or adjacent primary agricultural soils for commercial agriculture; or

(i) the applicant can realize a reasonable return on the fair market value of his land only by devoting the forest or secondary agricultural soils to uses which will significantly reduce their forestry or agricultural potential; and

(ii) there are no nonforest or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of forestry and agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

(D) Earth resources. A permit will be granted whenever it is demonstrated by the applicant, in addition to all other applicable criteria, that the development or subdivision of lands with high potential for extraction of mineral or earth resources will not prevent or significantly interfere with the subsequent extraction or processing of the mineral or earth resources.

(E) Extraction of earth resources. A permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material:

(i) when it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and

(ii) upon approval by the district commission or the board of a site rehabilitation plan which insures that

upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the state, except that gravel, silt and sediment may be removed pursuant to the regulations of the water resources board, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resources board.

(F) **Energy conservation.** A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation and incorporate the best available technology for efficient use or recovery of energy.

(G) **Private utility services.** A permit will be granted for a development or subdivision which relies on privately-owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately-owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.

(H) **Costs of scattered development.** The district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned

employment centers.

(J) **Public utility services.** A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

(K) **Development affecting public investments.** A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.

(L) **Rural growth areas.** A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

(10) Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24.

(b) At the request of an applicant, or upon its own motion, the district commission or the board shall consider whether to review any criterion or group of criteria of subsection (a) of this section before proceeding to or continuing to review other criteria. This request or motion may be made at any time prior to or during the proceedings. The district commission or the board, in its sole discretion, shall, within 20 days of the completion of deliberations on the criteria that are the subject of the request or motion, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria. If the district commission or the board first issues a partial decision under this subsection, the applicant or a party may appeal that decision within 30 days under section 6089 of this title, or may appeal it after the final decision on the complete application. If the applicant or party has not taken a prior appeal of a partial decision under this subsection with respect to particular criteria, then any findings on the complete application, relating to those criteria, may be appealed under section 6089 of this title.

(c) A permit may contain such requirements and conditions as are allowable within the proper exercise of the police power and which are appropriate with respect to (1) through (10) of subsection (a), including but not limited to those set forth in section 4407(4), (8) and (9), 4411(a)(2), 4415, 4416 and 4417 of Title 24, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule.

(d) The board may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to (1) through (7) and (9) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. The board shall accept determinations issued by a development review board under the